UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/013,078	12/10/2001	Antonio R. Bogat	9975	1412

26884 7590 02/01/2007

PAUL W. MARTIN
NCR CORPORATION, LAW DEPT.
1700 S. PATTERSON BLVD.
DAYTON, OH 45479-0001

EXAMINER	
O'CONNOR, GERALD J	
ART UNIT	PAPER NUMBER
3627	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/013,078	Bogat	
	Examiner	Art Unit	
	O'Connor	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *THREE* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *July 17, 2006 and October 4, 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *5-7 and 9-25* is/are pending in the application.

4a) Of the above claim(s) *14-22 and 25* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5-7, 9-13, 23, and 24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *December 10, 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Preliminary Remarks

1. This Office action responds to the amendment filed by applicant on October 4, 2006 and to the arguments filed by applicant on July 17, 2006, both in reply to the previous Office action on the merits, mailed April 18, 2006.

2. The cancellation of claim 8 by applicant in the reply filed October 4, 2006 is hereby acknowledged.

3. The amendment of claims 5 and 14 by applicant in the reply filed October 4, 2006 is hereby acknowledged.

4. The addition of claims 23-25 by applicant in the reply filed October 4, 2006 is hereby acknowledged.

Election/Restriction

5. Newly submitted claim 25 (Invention II) is directed to an invention that is independent or distinct from the invention originally claimed (Invention I) for the following reasons:

Invention I is related to Invention II, as process and apparatus for its practice. The inventions are distinct if it can be shown that *either*: (1) the process as claimed can be practiced

by another, materially different apparatus, or by hand, *or* (2) the apparatus as claimed can be used to practice another, materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another, materially different apparatus, or by hand, such as by apparatus requiring the goods be passed, in service, by hand from the incoming goods path into the goods collection zone.

6. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 25 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

7. Claims 14-22 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. The election was deemed as being constructively elected by original presentation for prosecution on the merits as set forth in the Office action mailed April 18, 2006.

8. This application now contains claims 14-22 and 25 drawn to inventions nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in-
>
> > (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> >
> > (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

10. Claims 5-7, 9-12, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Humble et al. (US 4,676,343).

Humble et al. disclose a method of detecting misappropriation of goods in a self-checkout lane 50 in a store, the self-checkout lane 50 having an incoming goods path and a goods collection zone 15, and goods being passed, in service, from the incoming goods path into the goods collection zone 15; the incoming goods path including a product scanner 10 electrically coupled to a processor 44, and the goods collection zone 15 including a weighing scale 43 electrically coupled to the processor 44; the method being performed by a processor and comprising the steps:

(a) receiving input from the product scanner 10 identifying goods introduced by a customer into the incoming goods path;

(b) controlling one or more barriers at least partially surrounding the goods collection zone 15 so as to restrict customer access to goods collecting in the goods collection zone;

(c) calculating, by referring to a database of product weights, a total weight value representative of the total weight of the goods introduced into the incoming goods path;

(d) once all the goods being checked out by a particular customer have passed onto the weighing scale, weighing the goods collectively at the goods collection zone 15 by the weighing scale 43 and producing a total weight signal for all the goods;

(e) receiving from the weighing scale 43 the total weight signal;

(f) comparing the said total weight value of the goods introduced into the incoming goods path with the said total weight of the goods collected at the goods collection zone and calculating any discrepancy between the said weights; and,

(g) if the calculated discrepancy exceeds a predetermined value, inhibiting conclusion of a transaction for purchase of goods introduced into the incoming goods path and collected in the goods collection zone and continuing to control the one or more barriers at least partially surrounding the goods collection zone so as to restrict access until the discrepancy is resolved and the transaction is concluded (see, in particular, column 5, line 64, thru column 7, line 27).

Regarding claims 6 and 7, the method of Humble et al. further comprises either of: notifying store personnel, or operating an alarm, if the calculated discrepancy is greater than the predetermined value.

Regarding claim 9, in the method of Humble et al., the weighing scale 43 is positioned beneath the goods collection zone 15.

Regarding claim 10, in the method of Humble et al., the goods collection zone 15 further includes a conveyor 12, 13.

Regarding claim 11, in the method of Humble et al., the weighing scale 43 is shaped and sized so as to substantially fill the goods collection zone 15.

Regarding claim 12, in the method of Humble et al., the step of calculating a total weight value by referring to a record of product weights further comprises: weighing loose grocery items in the incoming goods path.

Regarding claim 24, the method of Humble et al. further comprises operating a diverter to direct goods of a second customer to a second goods collection zone (see, in particular, Figure 11).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humble et al. (US 4,676,343).

Humble et al. disclose a method of detecting misappropriation of goods in a self-checkout lane in a store, as applied above in the rejection of claim 5 under 35 U.S.C. 102(b), but the method of Humble et al. fails to include automatically retracting/controlling the one or more barriers at least partially surrounding the goods collection zone when the calculated discrepancy is less than the predetermined value and payment for the collected goods has been made, since, (1) rather than automatically retracting the barrier from in front of the goods, the goods are automatically conveyed out from behind the barrier, and, (2) rather than providing access to the goods after payment has been made, access to the goods is given before payment is made/completed.

However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Humble et al. so as to retract/control the barrier rather than convey out the goods, and to collect payment before giving access to the goods for bagging rather than after, simply as a matter of design choice, since each change would comprise merely a reversal of parts, such as could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results, and since it has been held that a mere reversal of the essential working elements of an invention involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Response to Arguments

13. Applicant's arguments filed July 17, 2006 have been fully considered but they are not deemed persuasive.

14. The arguments regarding the previous prior art rejections have been considered, but have been rendered moot by applicant's amendment, and the consequent new grounds of rejection.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to the disclosure.

16. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is (571) 273-6787.

Official replies to this Office action may now be submitted electronically by registered users of the EFS-Web system. Information on EFS-Web tools is available on the Internet at: *http://www.uspto.gov/ebc/portal/tools.htm*. An EFS-Web Quick-Start Guide is available at: *http://www.uspto.gov/ebc/portal/efs/quick-start.pdf*.

Alternatively, official replies to this Office action may still be submitted by any ***one*** of fax, mail, or hand delivery. **Faxed replies should be directed to the central fax at (571) 273-8300.** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC
January 26, 2007

1/26/07

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627